

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1832 OF 1992

Dinkar Dattu Bodhe & Ors. Petitioners

Versus

Balasaheb Dattatray Khole Respondent

Mrs.Anita Agarwal for petitioners

Mr.V.S.Gokhale for respondent

Mr.G.M.Khambete for applicants

CORAM : P.V.KAKADE, J.

DATE : 29TH MARCH 2006

ORAL JUDGMENT :

1. The Petitioner-landlord has preferred this
petition against the judgment and order passed by Addl.
District Judge, Pune dated 19.1.1992 allowing appeal and
setting aside the order passed by Small Causes Court, Pune
in Suit No.1639/88 dated 30.3.1990 decreeing the suit for

possession of the suit premises under the provisions of the Bombay Rent Act, 1947 whereby the present respondent was directed to hand over vacant possession of the suit premises to the present petitioner.

2. I have heard the learned counsel for both the parties as well as the advocate in Application No.6924 of 1993 seeking impleading of third party respondents to the present proceedings.

3. The petitioner-plaintiff filed the suit against the defendant for eviction and possession of the suit property on the ground that the suit premises were let out to the defendant for the purpose of carrying on the business of tailoring. However, the defendant was not carrying on business of tailoring in the suit premises and he did not required the suit premises as he had engaged his brothers' son by name Sachin and Sandeep in the said business. It was further submitted that the suit premises was required reasonably and bonafide for the use of the plaintiff and his son for the purpose of business. Hence the suit came to be filed.

4. The defendant contested the suit, inter alia,

challenging the veracity of the allegations made by the plaintiff submitting that the defendant was Karta of the family and rent receipts were issued in his name, though the tenancy rights were owned and possessed by all the heirs of deceased Dattatraya excluding Shrikant and Savitri and including Deoraj and Prakash and the rent receipt of the premises in the name of defendant was for and on his behalf and for the benefit of all family members including Deoraj and Prakash. Other allegations were also denied and suit was sought to be dismissed.

5. The learned trial judge after hearing both the parties and on the basis of available evidence on record came to the conclusion that the plaintiff had proved that the suit premises was required reasonably and bonafide for him for occupation of his son. It was further held that the plaintiff would suffer greater hardship if the decree refused to pass than the defendant if the decree is passed and on such and other grounds the suit came to be decreed.

6. The appeal was carried to the District Court, Pune. The learned Addl. District Judge after hearing both the parties and on the basis of evidence on record held that the findings recorded by the lower court were

erroneous and therefore, set aside the decree and dismissed the suit. It was dismissed only on the ground that the suit was not maintainable for non joinder of Sachin Deoraj and Sandip Prakash Khole heirs of late Deoraj and Prakash as necessary party. The finding of the trial court on the ground contemplated under Section 13(1)(g) also reversed and it was held that the plaintiff has failed to prove reasonably and bonafide requirement of the suit premises. The issue regarding greater hardship was also held against the plaintiff. Hence the present petition.

7. At the out set, it may be noted that pending the appeal in the lower court said Sachin and Sandip had made an application Exh.18 seeking impleading them as party to the proceeding. However, the learned lower appellate court judge (incidentally the same judge) came to the conclusion that firstly the application was filed at belated stage and secondly that the third party had no specific knowledge that the rent receipts were issued in the name of defendant by the landlord. It was also held that the application to join those third persons as parties to the proceedings would be without specific pleadings and without giving opportunity to lead evidence

to the other side and therefore, it was held that it was not desirable to protract the proceeding and hence the application came to be rejected by order dated 20.12.1991.

. On this background, it is pertinent to note that the same learned judge has raised the issue to the effect that whether the suit would be maintainable for non joinder of said Sachin and Sandip, who were heirs of Deoraj and Prakash and the finding is recorded that the suit would not be maintainable without their presence. In the body of the judgment also the learned judge has referred to this aspect holding that there was valid question as to who was legal successor tenant whether the defendant or the third party and it is further observed that this question only be decided by joining the said third party.

. In my considered view, this entire aspect noted above shows the confused state of mind of the learned appellate court judge because on the one hand he dismissed the application for joining the third party as parties in December, 1991 and on the other hand by order dated 10.1.1992 he made to above observations raising the issue in question.

. Be as it may, on perusal of the entire reasoning on the said aspect there is no doubt whatsoever that the learned lower appellate court judge has mislead himself by taking upon himself the task of determining the question of tenancy rights, which in my view, would not be proper especially when it is evident on record and in fact the defence that the landlord had for all practical and legal purposes considered the defendant as tenant and had issued receipts in his name alone and the defendant had taken the defence that he was Karta of the family and therefore, the tenancy was in fact joint tenancy consisting of legal heirs of the deceased brothers Deoraj and Prakash. This stand is obviously taken to rebut the plaintiff's contention that the defendant introduced the said third persons in the suit premises illegally and without his permission. Under the circumstances, I prefer to disagree with the reasoning adopted by the lower appellate court judge when he comes to the conclusion that the suit is bad for non joinder of the parties. In fact if the learned judge found that the said persons were necessary parties, it was open for him to issue directions to join them as party but he could not do so because earlier he himself rejected the application of the said third persons to join

as necessary parties for the ground mentioned therein, which order became final for all the purposes so far as this proceeding was concerned. In these circumstances, I have no hesitation to hold that it cannot be said that the suit is not maintainable for non joinder of parties, especially when there is ample evidence on record to show that the defendant himself was tenant in the suit premises.

8. So far as issue contemplated under Section 13(1)(g) of the Bombay Rent Act is concerned, the lower appellate court has rejected the plaintiff's case on the ground that there is no specific pleading that son of the plaintiff requires the suit premises for his bonafide use and occupation. According to the lower appellate court, plaintiff should have specifically pleaded that he himself needed by suit premises of his business for his son Laxman, who was unemployed. While recording this finding the learned judge has reproduced the pleading of the plaintiff vide paras 6 and 7 of the plaint wherein it is clearly mentioned that it was pleaded that the plaintiff had got four sons by name Laxman, Suresh, Nandkumar and Mukund. His son Laxman was unemployed and required the suit shop for carrying on business of stationery and

cutlery bonafide and for reasonable cause. Therefore, it cannot be said that there was no specific pleading and on that count the finding to the effect that plaintiff has not proved his bonafide requirement is required to be set aside.

9. So far as issue of hardship is concerned, the learned judge has rebutted his earlier observations that said third persons Sachin and Sandip are in occupation of the suit premises and are running tailoring shop and therefore, they would suffer greater hardship than the plaintiff if the decree is refused to be passed. In my considered view, the question of hardship to Sachin and Sandip would not be relevant for the purpose of adjudication of the present dispute and therefore, I am inclined to hold that it would be greater hardship to the plaintiff if the suit is not decreed than the defendant if the suit is decreed, it is especially so when it is quite clear that the defendant is in possession of the four shop premises on busy market street like M.G.Marg, Pune. Moreover, by virtue of application being C.A.No.1706 of 2005, which was allowed whereby additional evidence regarding subsequent event was brought on record that pending the trial the defendant has obtained possession of

business premises of two rooms admeasuring 28 x 12 ft. which adjoined to rear room of 10 x 10 ft. and therefore, even if it is held that need of Sachin and Sandip, the third parties, is to be taken into account, still the greater hardship would be caused to the plaintiff if the suit is to be decreed.

. So far as the Application No.6924 of 1993 is concerned, which is again made by the third parties to implead them as respondents in the suit, one can say that it is for them to seek independent remedy to get their alleged right declared under the relevant provisions of law and no shortcut of this nature can be made available to them to prejudice the right of the plaintiff, who has established that the suit premises is reasonably and bonafide required for the use of his son.

10. In view of this position, I do not see any reason why the Application No.6924 of 1993 should be allowed and has to be dismissed and stands dismissed.

11. In the result, rule is made absolute. The order passed by the lower appellate court judge dated 10.1.1992 is hereby set aside and the order passed by the trial

court date 30.3.1990 is restored. With this direction the petition stands disposed of with no order as to costs.

12. At this stage the learned counsel for the respondent sought Stay of the Order. In view of the facts and circumstances the order shall not be executed for the period of six weeks.

. Certified copy is expedited.